

**UNITED STATES OF AMERICA  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**CHAIRMAN:**  
Judge Wm. Terrell Hodges  
United States District Court  
Middle District of Florida

**MEMBERS:**  
Judge John F. Keenan  
United States District Court  
Southern District of New York

Judge D. Lowell Jensen  
United States District Court  
Northern District of California

Judge J. Frederick Motz  
United States District Court  
District of Maryland

Judge Robert L. Miller, Jr.  
United States District Court  
Northern District of Indiana

Judge Kathryn H. Vratil  
United States District Court  
District of Kansas

Judge David R. Hansen  
United States Court of Appeals  
Eighth Circuit

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**DIRECT REPLY TO:**

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<http://www.jpml.uscourts.gov>

August 25, 2004

Honorable George A. O'Toole, Jr.  
U.S. District Judge  
4710 U.S. Courthouse  
One Courthouse Way  
Boston, MA 02210-3002

Re: MDL-1203 -- In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation

*(SEE ATTACHED SCHEDULE OF ACTIONS)*

Dear Judge O'Toole:

Presently before the Panel pursuant to 28 U.S.C. § 1407 is a notice of opposition to the Panel's conditional transfer order in the above-described matter. The parties will have an opportunity to fully brief the question of transfer and the matter will be considered at a bimonthly Panel hearing session. The purpose of this letter is to apprise you of the effect of the pendency of the actions before the Panel. Panel Rule 1.5, 199 F.R.D. 425, 427 (2001), provides:

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court.

Thus your jurisdiction continues until any transfer ruling becomes effective. If you have a motion pending before you in any of the actions – particularly a motion to remand to state court (if the action was removed to your court) – you are encouraged to rule on the motion unless you conclude that the motion raises issues likely to arise in other actions in the transferee court, should we order transfer, and would best be decided there.

Please feel free to contact our staff in Washington with any questions.

Kindest regards,



Wm. Terrell Hodges  
Chairman

**SCHEDULE OF ACTIONS  
DOCKET NO. 1203  
IN RE DIET DRUGS (PHENTERMINE/FENFLURAMINE/DEXFENFLURAMINE) PRODUCTS  
LIABILITY LITIGATION**

District of Massachusetts

*Carol Beane, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11041  
*Chester Kajkowski, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11042  
*Jane Antuono, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11043  
*Sandra Carothers, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11051  
*Debbie Daily, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11052  
*Mary Alkire, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11053  
*Kristin Ellis, et al. v. Indevus Pharmaceuticals, Inc., et al.*, C.A. No. 1:04-11054

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August 25, 2004

Neil D. Overholtz, Esq.  
Aylstock, Witkin & Sasser, P.L.C.  
55 Baybridge Drive  
Gulf Breeze, FL 32561

Re: MDL-1203 -- In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation

*(SEE ATTACHED SCHEDULE OF ACTIONS/PANEL SERVICE LIST)*

Motion and Brief Due on or before: September 9, 2004

Dear Mr. Overholtz :

We have received and filed your Notice of Opposition to the proposed transfer of the referenced action for coordinated or consolidated pretrial proceedings. In accordance with Rule 7.4(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435 (2001), the conditional transfer order is stayed until further order of the Panel. You must adhere to the following filing requirements:

- 1) Pursuant to Panel Rules 5.12(a), 5.13 and 7.4(d), an original and eleven copies of your Motion and Brief to Vacate the Conditional Transfer Order, as well as a computer readable disk of the pleading in WordPerfect for Windows format, must be received in the Panel offices by the due date listed above. Fax transmission of your motion and brief will not be accepted. See Panel Rule 5.12(d). Counsel filing oppositions in more than one action are encouraged to consider filing a single motion and brief with an attached schedule of actions.
- 2) Papers must be served on the enclosed Panel Service List. Please attach a copy of this list to your certificate of service. (Counsel who have subsequently made appearances in your action should be added to your certificate of service).
- 3) Rule 5.3 corporate disclosure statements are due within eleven days of the filing of the motion to vacate.
- 4) Failure to file and serve the required motion and brief within the allotted fifteen days will be considered a withdrawal of the opposition and the stay of the conditional transfer order will be lifted.

Any recent official change in the status of a referenced action should be brought to the attention of the clerk's office as soon as possible by facsimile at (202) 502-2888. Your cooperation would be appreciated.

Very truly,

Michael J. Beck  
Clerk of the Panel

By 

Deputy Clerk

Enclosure

cc: Panel Service List  
Transferee Judge: Judge Harvey Bartle III  
Transferor Judge: Judge George A. O'Toole, Jr.

JPML Form 37

**SCHEDULE OF ACTIONS/PANEL SERVICE LIST (Excerpted from CTO-126)**  
**DOCKET NO. 1203**  
**IN RE DIET DRUGS (PHENTERMINE/FENFLURAMINE/DEXFENFLURAMINE) PRODUCTS**  
**LIABILITY LITIGATION**

District of Massachusetts

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